

HOUSE BILL NO. 143

INTRODUCED BY P. CLARK

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE METAL MINE RECLAMATION LAWS TO ALLOW THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO INCREASE RECLAMATION BONDS PENDING MODIFICATION OF PERMITS; AMENDING SECTION 82-4-337, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.

(1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

1 (ii) the information and certification have been submitted pursuant to 82-4-335(9); and

2 (iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

3 (d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has
4 failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because
5 of extended adverse weather conditions, the department may extend the time period prescribed in subsection
6 (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall
7 serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject
8 to appeal to the board in accordance with the Montana Administrative Procedure Act.

9 (ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed
10 for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the
11 department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more
12 than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

13 (iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed
14 to review the application and reclamation plan for a major operation, the department and the applicant shall
15 negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit
16 reasonable review. The applicant may by written waiver extend this time period.

17 (iv) If the department decides to hire a third-party contractor to prepare an environmental impact
18 statement on the application, the department shall prepare a list of no fewer than four contractors acceptable
19 to the department and shall provide the applicant with a copy of the list. The applicant shall provide the
20 department with a list of at least 50% of the contractors from the department's list. The department shall select
21 its contractor from the list provided by the applicant.

22 (v) Failure of the department to act upon a complete application within the extension period constitutes
23 approval of the application, and the permit must be issued promptly upon receipt of the bond as required in
24 82-4-338.

25 (2) The operating permit must be granted for the period required to complete the operation and is valid
26 until the operation authorized by the permit is completed or abandoned unless the permit is suspended or
27 revoked by the department as provided in this part.

28 (3) (a) The operating permit must provide that the reclamation plan may be modified by the department,
29 upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the
30 term of the permit and for any of the following reasons:

1 ~~(a)~~(i) to modify the requirements so that they will not conflict with existing laws;

2 ~~(b)~~(ii) when the previously adopted reclamation plan is impossible or impracticable to implement and
3 maintain;

4 ~~(c)~~(iii) when significant environmental problem situations are revealed by field inspection.

5 (b) (i) Upon determining pursuant to subsection (3)(a)(ii) or (3)(a)(iii) that the reclamation plan must be
6 modified, the department shall issue a notice and order to modify the reclamation plan. In the notice the
7 department shall:

8 (A) describe the significant environmental problem situation or the reason that the reclamation plan is
9 impossible or impractical to implement and maintain;

10 (B) describe the portions of the reclamation plan that must be modified; and

11 (C) require that the permittee submit interim reclamation plan amendments within 45 days of receipt of
12 the notice. The preliminary reclamation plan amendments must be designed to prevent, remedy, or mitigate the
13 environmental problem situation or the impossibility or impracticability of implementing or maintaining the
14 reclamation plan and must be based on the department's notice and any data or information available to the
15 permittee during the 45-day period.

16 (ii) Within 10 days of receipt of the notice and order pursuant to subsection (3)(b)(i), the permittee may
17 request an informal conference with the director of the department on the notice and order to submit interim
18 reclamation plan amendments. At the informal conference, the permittee may present data, information, or
19 arguments pertaining to the alleged environmental problem situation or the impossibility or impracticability of
20 implementing or maintaining the reclamation plan and the need for interim reclamation plan amendments. If the
21 permittee requests that the notice and order be withdrawn or modified, the director shall respond in writing within
22 5 working days of the informal conference.

23 (iii) (A) Unless the notice and order are withdrawn pursuant to subsection (3)(b)(ii), the permittee shall
24 propose interim reclamation plan amendments in accordance with the notice and order.

25 (B) The department shall review the permittee's proposed interim reclamation plan amendments. If the
26 department determines that there is not a reasonable possibility that the proposed interim reclamation plan
27 amendments will prevent, remedy, or mitigate the environmental problem situation or the impossibility or
28 impracticability of implementing and maintaining the reclamation plan, it shall notify the permittee that the
29 proposed amendments are rejected. The notice must advise the permittee of the deficiencies in the
30 amendments. The permittee shall, within 30 days of receipt of the notice, propose revised amendments that

1 address the deficiencies that the department has identified. If the department determines that there is not a
2 reasonable possibility that the revised reclamation plan amendments will prevent, remedy, or mitigate the
3 environmental problem situation or the impossibility or impracticability of implementing and maintaining the
4 reclamation plan, the department shall reject the amendments. If the department rejects the proposed
5 amendments or if the permittee fails to submit proposed amendments, the department may prepare its own
6 interim reclamation plan amendments in consultation with the permittee.

7 (C) When the department accepts the permittee's interim reclamation plan amendments or prepares its
8 own interim reclamation plan amendments, it shall calculate the cost of implementation of the amendments by
9 the department. The department shall notify the permittee of the cost. If the interim reclamation plan will
10 increase the cost of reclamation, the permittee shall post an interim reclamation bond in the amount of the
11 increase within 60 days of receipt of the notice. Upon request of the permittee made within 20 days of receipt
12 of the interim reclamation bond amount, the director of the department shall hold an informal conference on the
13 bond amount with the permittee. At the informal conference, the permittee may submit data, information, and
14 arguments regarding the department's bond amount and may propose a different amount. The director shall
15 respond in writing to the permittee within 5 working days. The bond must guarantee the permittee's compliance
16 with the interim reclamation plan amendments. The department may require that the bond also guarantee
17 compliance with the final reclamation plan amendments that are made pursuant to 82-4-341 or subsection
18 (3)(b)(iv) of this section, to the extent that they are the same as the interim reclamation plan amendments.
19 Failure to submit the interim bond subjects the permittee to penalties under 82-4-361 and permit suspension
20 under 82-4-362.

21 (iv) (A) Following approval or adoption of interim reclamation plan amendments, the department shall
22 determine conceptual final reclamation plan amendments that will, with reasonable scientific certainty, prevent,
23 remedy, or mitigate the environmental problem situation or the impossibility or impracticability of implementing
24 and maintaining the reclamation. In this process, the department shall comply with Title 75, chapter 1.

25 (B) When the department has determined the conceptual final reclamation plan amendments pursuant
26 to subsection (3)(b)(iv)(A), the department shall issue a notice and order requiring the permittee to submit final
27 reclamation plan amendments in accordance with the conceptual final reclamation plan within a reasonable time
28 designated by the department.

29 (C) Within 30 days of receipt of the department's notice and order pursuant to subsection (3)(b)(iv)(B),
30 the permittee may request a hearing before the board. If the permittee does not request a hearing, the permittee

1 shall submit final reclamation plan amendments in accordance with the department's order.

2 (D) Following the hearing, the board shall determine whether final reclamation plan amendments are
3 necessary and affirm or rescind the department's order to submit final reclamation plan amendments. If the
4 board affirms the order to submit final reclamation plan amendments, the board shall order the permittee to
5 submit a reclamation plan to the board in accordance with the conceptual plan contained in the department's
6 order or another reclamation plan determined by the board on the basis of the record developed during the
7 hearing process. The board shall set a reasonable period for submission of the plan to the department.

8 (E) Upon submission of the final reclamation plan amendments, the department shall require a
9 supplemental bond, if necessary, pursuant to 82-4-338.

10 (4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit
11 revision. A modification of the operating permit, including a modification necessary to conform to the
12 requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in
13 accordance with the procedures for an application for a permit amendment or revision that are established
14 pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part
15 2.

16 (b) ~~The~~ Except as provided in subsection (3), the modification of an operating permit may not be
17 finalized and an existing bond amount may not be increased until the permit modification procedures and
18 analysis described in subsection (4)(a) are completed.

19 (5) During the term of an operating permit, an operator may apply for an amendment or revision to the
20 permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

21 (6) Applications for major amendments must be processed in the same manner as applications for new
22 permits.

23 (7) Major amendments are those that may significantly affect the environment. Minor amendments are
24 those that will not significantly affect the environment. The board may by rule establish criteria for classification
25 of amendments as major or minor. The rules must establish requirements for the content of applications for
26 amendments and revisions and procedures for processing of minor amendments.

27 (8) If the department demonstrates that a revision may result in a significant environmental impact that
28 was not previously and substantially evaluated in an environmental impact statement, the application must be
29 processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b),
30 applications for minor amendments and other revisions must be processed within 30 days of receipt of an

1 application."

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3 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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